

## **INTRODUCTION TO THE 2015 REGULATORY PLAN**

Executive Order 12866, issued in 1993, requires the production of a Unified Regulatory Agenda and Regulatory Plan. Executive Order 13563, issued in 2011, reaffirms the requirements of Executive Order 12866.

Consistent with these Executive Orders, the Office of Information and Regulatory Affairs (OIRA) is providing the 2015 Unified Regulatory Agenda (Agenda) and the Regulatory Plan (Plan) for public review. The Agenda and Plan are preliminary statements of regulatory and deregulatory policies and priorities under consideration. The Agenda and Plan include “active rulemakings” that agencies could possibly conclude over the next year.

The Plan provides a list of important regulatory actions that agencies are considering for issuance in proposed or final form during the 2016 fiscal year. In contrast, the Agenda is a more inclusive list, including numerous ministerial actions and routine rulemakings, as well as long-term initiatives that agencies do not plan to complete in the coming year but on which they are actively working.

A central purpose of the Agenda is to involve the public, including State, local, and tribal officials, in Federal regulatory planning. The public examination of the Agenda and Plan will facilitate public participation in a regulatory system that, in the words of Executive Order 13563, protects “public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.” We emphasize that rules listed on the Agenda must still undergo significant development and review before they are issued. No regulatory action can become effective until it has gone through the legally required processes, which generally include public notice and comment. Any proposed or final action must also satisfy the requirements of relevant statutes, Executive Orders, and Presidential Memoranda. Those requirements, public comments, and new information may or may not lead an agency to go forward with an action that is currently under contemplation.

Among other information, the Agenda also provides an initial classification of whether a rulemaking is “significant” or “economically significant” under the terms of Executive Orders 12866 and 13563. Whether a regulation is listed on the Agenda as “economically significant” within the meaning of Executive Order 12866 (generally, having an annual effect on the economy of \$100 million or more) can depend on several factors: regulations may count as economically significant because they impose costs, confer large benefits, or remove significant burdens.

### **Executive Orders 13563 and 13610: Regulatory Development, and the Retrospective Review of Regulation**

Executive Order 13563 reaffirmed the principles, structures, and definitions in Executive Order 12866, which has long governed regulatory review. Executive Order 13563 explicitly points to the need for predictability and certainty in the regulatory system, as well as for use of the least burdensome means to achieving regulatory ends. These Executive Orders include the requirement that, to the extent permitted by law, agencies should not proceed with rulemaking in

the absence of a reasoned determination that the benefits justify the costs. They also establish public participation, integration and innovation, flexible approaches, scientific integrity, and retrospective review as areas of emphasis in regulation. In particular, Executive Order 13563 explicitly draws attention to the need to measure and improve “the actual results of regulatory requirements”—a clear reference to the importance of the retrospective review of regulations.

Executive Order 13563 addresses new regulations that are under development, as well as retrospective review of existing regulations that are already in place. With respect to agencies' review of existing regulations, the Executive Order calls for careful reassessment based on empirical analysis. The prospective analysis required by Executive Order 13563 may depend on a degree of prediction and speculation about a rule's likely impacts, and the actual costs and benefits of a regulation may be lower or higher than what was anticipated when the rule was originally developed.

Executive Order 13610, *Identifying and Reducing Regulatory Burdens*, issued in 2012, institutionalizes the retrospective—or “lookback”—mechanism set out in Executive Order 13563 by requiring agencies to report to the Office of Management and Budget and to the public twice each year (January and July) on the status of their retrospective review efforts. In these reports, agencies are to “describe progress, anticipated accomplishments, and proposed timelines for relevant actions.”

Executive Orders 13563 and 13610 recognize that circumstances may change in a way that requires reconsideration of regulatory requirements. Lookback analysis allows agencies to reevaluate existing rules and to streamline, modify, or eliminate those regulations that do not make sense in their current form. The agencies' lookback efforts so far during this Administration have yielded approximately \$22 billion in savings for the American public over the next five years.

The Administration is continuing to work with agencies to institutionalize retrospective review so that agencies regularly review existing rules on the books to ensure they remain effective, cost-justified, and based on the best available science. The Administration will continue to examine what is working and what is not, and eliminate unjustified and outdated regulations.

Regulatory lookback is an ongoing exercise, and continues to be a high priority for the Administration. In accordance with Executive Orders 13610 and 13563, in July 2015, agencies submitted to OIRA the latest updates of their retrospective review plans, which are publicly available at:

<https://www.whitehouse.gov/omb/oira/regulation-reform>. Federal agencies will again update their retrospective review plans in January 2016. OIRA has asked agencies to continue to emphasize regulatory lookbacks in their latest Regulatory Plans.

Reflecting that focus, the current Agenda lists approximately seventy-five rules under active development that are characterized as retroactively reviewing existing programs. Below are some examples of agency plans to reevaluate current practices in accordance with Executive Orders 13563 and 13610:

- After extensive public engagement and in response to a recent court decision, the Environmental Protection Agency (EPA) is proposing revisions to the 2007 Exceptional Events rule. These revisions will streamline the process that states follow to decide whether air quality monitoring data associated with an “exceptional event” should be included when determining if an area is meeting national air quality standards. Exceptional events include natural events such as wildfires, stratospheric ozone intrusions, and volcanic and seismic activities. Given the possible influence of wildfires on ozone, EPA is also releasing draft guidance that provides states with additional information on preparing exceptional events demonstrations for wildfires as they relate to the ozone standards.
- The Department of Labor (DOL) has taken steps to include retrospective analysis requirements in new regulations in order to facilitate evaluation of their impacts. For example, DOL’s Mine Safety and Health Administration announced in its 2014 Respirable Dust final rule that it will conduct a retrospective review in 2017 to evaluate the data collected using continuous personal dust monitors. Additionally, the Occupational Safety and Health Administration’s Recordkeeping and Reporting Requirements final rule—moving from the Standard Industrial Classification System to the North American Industry Classification System for determining which industries are low-hazard and potentially exempt from recordkeeping requirements—includes a commitment to conduct a retrospective review of the agency’s recordkeeping regulations. Finally, in DOL’s Wage and Hour Division’s recent Notice of Proposed Rulemaking to modernize the Fair Labor Standards Act’s Overtime Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, the Division proposed to consider a future retrospective review of the rule after it is finalized and implemented.
- The Department of Housing and Urban Development (HUD) is working on a final rule to streamline, in several ways, the inspection and home warranty requirements for the Federal Housing Administration’s (FHA) single family mortgage insurance. In doing so, FHA would increase choice and lower the costs for FHA borrowers. First, HUD is considering the removal of regulations that require the use of an inspector from the FHA Inspector Roster as a condition for FHA mortgage insurance. This change is based on the recognition of the sufficiency and quality of inspections carried out by local jurisdictions. Second, this rule would also remove the regulations requiring homeowners to purchase 10-year protection plans from FHA-approved warranty issuers to qualify for high loan-to-value FHA-insured mortgages. This change is based on the increased quality of construction materials and the standardization of building codes and building code enforcement. HUD expects the rule to increase flexibility for homeowners and reduce the regulatory burden on lenders.

## Executive Order 13609: International Regulatory Cooperation

In addition to using regulatory lookback as a tool to make the regulatory system more efficient, the Administration has focused on promoting international regulatory cooperation. International regulatory cooperation supports economic growth, job creation, innovation, trade and investment, while also protecting public health, safety, and welfare. In May 2012, President Obama issued Executive Order 13609, *Promoting International Regulatory Cooperation*, which emphasizes the importance of these efforts as a key tool for eliminating unnecessary differences in regulation between the United States and its major trading partners. Additionally, as part of the regulatory lookback initiative, Executive Order 13609 requires agencies to “consider reforms to existing significant regulations that address unnecessary differences in regulatory requirements between the United States and its major trading partners...when stakeholders provide adequate information to the agency establishing that the differences are unnecessary.”

Executive Order 13609 also directed each agency to submit a Regulatory Plan that includes “a summary of its international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations.” Further, Executive Order 13609 requires each agency to “ensure that significant regulations that the agency identifies as having significant international impacts are designated as such” in the Regulatory Agenda.

In furtherance of this focus on international regulatory cooperation, in the summer of 2014, the United States and Canada released the U.S.-Canada Regulatory Cooperation Council (RCC) Joint Forward Plan.<sup>1</sup> The Forward Plan identifies twenty-four areas of cooperation where the United States and Canada will work together over the next three to five years in order to modernize our thinking around international regulatory cooperation and develop a toolbox of strategies to address international regulatory issues as they arise. Building on the Forward Plan, in the Spring of 2015, agencies in the United States and Canada issued joint work plans to guide focused international regulatory cooperation efforts. The Forward Plan and related work represent a significant turning point in the Administration’s regulatory cooperation relationship with Canada, and outline new Federal agency-level partnership arrangements to help institutionalize the ways in which our regulators work together. The Forward Plan will help remove unnecessary requirements, develop common standards, and identify potential areas where future regulation may unnecessarily differ. This kind of international cooperation on regulations between the United States and Canada will help eliminate barriers to doing business in the United States or with U.S. companies, grow the economy, and create jobs. The Administration also continues to work with other countries, including Mexico and Brazil, to identify opportunities for regulatory cooperation.

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<sup>1</sup> Available at: <http://www.whitehouse.gov/sites/default/files/omb/oira/irc/us-canada-rcc-joint-forward-plan.pdf>.

The Administration continues to foster a regulatory system that emphasizes the careful consideration of costs and benefits, public participation, integration, regulatory innovation, flexible regulatory approaches, and science. These considerations are meant to produce a regulatory system that draws on recent learning, that is driven by evidence, and that is suited to the distinctive circumstances of the 21<sup>st</sup> Century.